

15-0538

IN THE CIRCUIT COURT OF MONONGALIA COUNTY, WEST VIRGINIA
Division No. 1

STATE OF WEST VIRGINIA

Vs.

FELONY NO. 14-F-314

ROBERT HERNANDEZ, JR.,
Defendant.

SENTENCING ORDER

On March 16, 2015, the sentencing hearing was conducted. The State was represented by Prosecuting Attorney Marcia Ashdown and Assistant Prosecuting Attorney Perri DeChristopher, and the defendant was present in person and with his attorney, Sherman Lambert. The Honorable Susan B. Tucker presided.

Previously, on January 29, 2015, the defendant's jury returned a verdict of guilty on the charge of Murder in the First Degree, and a recommendation for no mercy. The Court directed the preparation of a presentence report and a victim impact information and scheduled a sentencing hearing.

The Court ascertained that the defendant had received and reviewed the presentence report and the victim impact statements. On behalf of the defendant, his counsel informed the Court of items in the presentence report that the defendant asserted were incorrect as they pertain to his criminal history. The defendant also noted information included in the victim impact submission that was incorrect, inasmuch as the defendant had not been sentenced as of the date of the report from the West Virginia Court of Claims. Each of the defendant's representations was fully noted on the record.

Victim impact statements were made by Charles and Lakisha Elder, parents of the deceased victim, Dvante Waites.

The defendant exercised his right of allocution and informed the Court that he maintains his innocence of the charge.

The State presented its remarks to the Court to the effect that the jury verdict and its sentence of life in prison without the possibility of parole, and ask the Court to pronounce that sentence. Counsel for the defendant also addressed the Court. During his remarks to the Court, defense counsel informed the Court that he intended to file a post-trial motion, and he advised the Court that the defendant is aware of his right of appeal.

Accordingly, based upon the jury verdict and the jury's recommendation for no mercy, the Court ORDERED the defendant to be sentenced to a term of life imprisonment in the West Virginia State Penitentiary without mercy, meaning that the defendant will not be eligible for parole at any time.

The Court ORDERED the defendant to be remanded to the North Central Regional Jail as a Department of Corrections inmate, pending a post-trial motion hearing.

It is also ORDERED that a copy of this Order be provided to counsel for the defendant; to North Central Regional Jail (by fax); to the West Virginia Division of Corrections, attn: Diann Skiles, 112 California Ave., Bldg. 4, Room 300, Charleston, WV 25305; and to the Prosecuting Attorney's Office.

ENTER: April 01, 2015
Susan B. Tucker
JUDGE SUSAN B. TUCKER

Lambert

IN THE CIRCUIT COURT OF MONONGALIA COUNTY, WEST VIRGINIA
Division No. 1

STATE OF WEST VIRGINIA

Vs.

FELONY NO. 14-F-314

ROBERT HERNANDEZ, JR.,
Defendant.

ORDER DENYING POST-TRIAL MOTIONS

On May 4, 2015, a post-trial trial motion hearing was held in the above-captioned case, with the Honorable Susan B. Tucker presiding. The State was represented by Prosecuting Attorney Marcia Ashdown and Assistant Prosecuting Attorney Perri DeChristopher, and the defendant was present in person and with his attorney, Sherman Lambert. Prior to the hearing the defendant had filed a Motion for Judgement of Acquittal and/or New Trial, and the State filed its response.

Counsel for the defendant comprehensively argued his motion for judgement of acquittal or in the alternative for a new trial, focusing chiefly upon the assertion that the evidence was facially insufficient to support the jury's verdict, finding the defendant guilty of murder in the first degree followed by a recommendation for no mercy. The State made its argument in opposition to the motion.

After fully considering the arguments of counsel, and recalling the evidence presented at trial, the Court DENIED the defendant's motion. For the reasons stated on the record, the Court found that the State's evidence, both direct and circumstantial, was fully sufficient to convince reasonable jurors beyond a reasonable doubt of the defendant's guilt on the charge of first degree murder. The Court is satisfied that there was sufficient evidence on every required element of proof for the charge of first degree murder and that the jury was correctly charged by the Court as to the applicable law. The Court observed that questions of witness credibility are to be

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determined by the jury, and found that there was no reason to disagree with or disturb the apparent findings by the jury as to witness credibility.

Accordingly, at the request of the defendant, and with no objection by the State, the Court RE-SENTENCED the defendant for the purpose of the filing of his appeal to the West Virginia Supreme Court of Appeals:

CONVICTION DATE: January 29, 2015
INITIAL SENTENCING DATE FOLLOWING CONVICTION: March 16, 2015
RE-SENTENCE DATE FOLLOWING POST-TRIAL MOTIONS: May 4, 2015
EFFECTIVE SENTENCE DATE: August 15, 2014

The Court also addressed the outstanding issue of restitution, ORDERING that the defendant shall pay \$2,161.00 in restitution to Charles and Lakisha Elder, for funeral expenses for the deceased victim, which were not covered by the State Victim Compensation Fund. The Court also ORDERED the defendant to pay to Charles and Lakisha Elder, \$100,000.00 in reparations. The Court ORDERED those amounts of restitution and reparation reduced to judgement.

A copy of this Order shall be provided to defense counsel Sherman Lambert; to North Central Regional Jail (by fax); to the West Virginia Division of Corrections, attn: Diann Skiles, 112 California Ave., Bldg. 4, Room 300, Charleston, WV 25305; to the Victim Witness Program; and to the Prosecuting Attorney's Office.

ENTER:

May 15 2015
Susan B. Tucker
JUDGE SUSAN B. TUCKER

RTH
SLC

15-0538

IN THE SUPREME COURT OF APPEALS OF THE STATE OF WEST VIRGINIA

ROBERT HERNANDEZ,
Petitioner,

v.

SUPREME COURT # _____
Circuit Court of Monongalia County
Case No.: 14-F-314

STATE OF WEST VIRGINIA,
Respondent.

ADDENDUM TO NOTICE OF APPEAL

Number 16 - Nature of the Case, Relief Sought, Outcome Below

1. Nature of the Case - Criminal Case - The Petitioner was indicted by a Monongalia County Grand Jury for Murder in the First Degree, a felony.
2. Relief Sought - The Petitioner seeks a new trial in the Circuit Court of Monongalia County, West Virginia.
3. Outcome Below - The Petitioner was found guilty and convicted of Murder in the First Degree, a felony, with no recommendation of mercy and sentenced to life in the penitentiary, without possibility of parole.

Number 17 - Assignments of Error

- a. The Petitioner contends that trial court erred by failing to grant Petitioner's Motion for Judgment of Acquittal as to Murder in the First Degree, as the evidence offered by the State at trial was insufficient even when considered in a light most favorable to the State to support the verdict returned by the jury.
- b. Defendant submits that the State offered no evidence of premeditation or any evidence of deliberation.